

INVITATION FOR SEALED BIDS

IFB NO. 08.10.2016.438
TO PROVIDE: THE RENTAL OF AIR MATTRESS
ISSUE DATE: 7/14/2016

CLOSING LOCATON

Mississippi State Hospital – Building 93
3550 Hwy 468 West/P.O. Box 1
Whitfield, MS 39193

BID COORDINATOR

H.L. LOCKHART
Telephone: (601) 351-8056
Fax: (601) 351-8034
E-Mail: Lockhhl@msh.state.ms.us

TECHNICAL CONTACTS

H.L. LOCKHART
Telephone: (601) 351-8056
E-Mail: Lockhhl@msh.state.ms.us

CLOSING DATE AND TIME

Bids must be received by 3:00 P.M. (CST) on 08/10/2016



MISSISSIPPI STATE HOSPITAL

P.O. BOX 157-A, WHITFIELD, MS 39193

(601) 351-8000

WWW.MSH.STATE.MS.US

James G. Chastain, FACHE
Director

REQUEST FOR COMPETITIVE SEALED BIDS: MSH 08.10.2016.438

RFX # 3160001163

REQUEST FOR SEALED BID: (Mattress Rental)

PROSPECTIVE BIDDERS:

1. GENERAL TERMS AND CONDITIONS

- 1.1 In accordance with the rules and regulations of the Mississippi Department of Finance and Administration, Office of Purchasing, Travel, and Fleet Management, Mississippi State Hospital (MSH) will receive bids for mattress rental as described in the following specifications. A copy of the regulations can be found at <http://www.dfa.state.ms.us/purchasing/procurementmanual>.
- 1.2 Written sealed bids and samples must be received no later than 3:00 P.M., **Wednesday, August 10, 2016**, at Mississippi State Hospital, by hand delivery at the Central Warehouse Building 93, 3550 Hwy 468 West, Whitfield, MS 39193 or by mail delivery at P.O. Box 1, Whitfield, Mississippi 39193. Bidders can also submit a bid on line in the State of Mississippi electronic procurement system, MAGIC. In order to submit bid bidders must be registered as a vendor in the MAGIC system for the State of Mississippi and have an I.D. number and password assigned at the time of registration. MSH prefers that bidders enter bids through MAGIC Bid Entry System. Help for registering in MAGIC can be found at www.mmrs.state.ms.us.
- 1.3 Opportunities for on-site visits, at Mississippi State Hospital, to discuss bid specifications and inspect work sites, products or equipment will be made by appointment only. Arrangements may be made by contacting H.L. Lockhart, Purchasing Chief, Mississippi State Hospital, Whitfield, MS 39193 at (601) 351-8056.
- 1.4 Mississippi State Hospital desires to contract for the rental of an air mattress as specified in this bid invitation.
- 1.5 Failure to examine any drawings, specifications, and instructions will be at the bidder's risk. It shall be incumbent upon the bidder to understand the specifications. Any requests for clarifications shall be in writing and shall be submitted to the MSH Purchasing Office at least five (5) working days prior to the date and time set for the bid opening.
- 1.6 If any questions or responses require revision to the solicitation as originally published, such revisions will be by formal amendment only. If the solicitation includes a contact person for technical information, bidders are cautioned that any oral or written representation made by this or any person that appear to

A FACILITY OF THE MISSISSIPPI DEPARTMENT OF MENTAL HEALTH

ACCREDITED BY THE JOINT COMMISSION ON ACCREDITATION OF HEALTHCARE ORGANIZATIONS

change materially any portion of the solicitation shall not be relied upon unless subsequently ratified by a written amendment to this solicitation, issued by the MSH Purchasing Office. For determination as to whether any representation made requires that an amendment be issued, contact the MSH Purchasing Office at (601) 351-8056.

- 1.7 It is the intent of the specifications to obtain a product and related services that will adequately meet the needs of MSH while promoting the greatest extent of competition that is practicable. Bidders should notify MSH of any specifications, terms or conditions which are formulated in a manner which would unnecessarily restrict competition. Any protest or question concerning the invitation for bid (IFB), subsequent order and delivery procedures, bidding procedures or bid award must be received, in writing, in the MSH Purchasing Office no later than seven (7) days after protestor knows or should have known of the protest issue.
- 1.8 No amendment will be issued within a period of two (2) working days prior to the time and date set for the bid opening unless such amendment also amends the bid opening date to a date not less than five (5) days after the date of the amendment. Bidders shall acknowledge receipt of any amendment to the solicitation by signing and returning the amendment with the bid or prior to submitting the bid. Bidder will identify the amendment number in the space provided for this purpose on the bid execution form, or by letter. The acknowledgement must be received by MSH by the time, date and at the place specified for receipt of bids.
- 1.9 If purchase orders or contracts are cancelled because of the awarded vendor's failure to perform or a request for an unspecified price increase, that vendor shall be removed from our bidder's list for a period of no less than twenty four (24) months.
- 1.10 The bidder understands that Mississippi State Hospital is an equal opportunity employer and therefore, maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state or local laws. All such discrimination is unlawful and Contractor/Seller agrees during the term of the agreement that Contractor/Seller will strictly adhere to this policy in its employment practices and provisions products and services. Contractor/Seller shall comply with, and all activities under this agreement shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.
- 1.11 Both Mississippi State Hospital and the successful vendor will agree that the initiation and continuance of the contractual agreement will be based on the availability of funds. Should there be no funds available at the time of the bid opening or during the agreement period the agreement will be cancelled with no further obligation by Mississippi State Hospital. Any property covered by the agreement will be returned to the vendor. Provided, however, that all payments due for the current fiscal year will be paid in full.
- 1.12 Bid openings will be conducted open to the public. All bidders are invited and encouraged to attend the bid opening meeting to review the submitted bids. However, they will serve only to open the bids. No discussion will be entered into with any vendor as to the quality or provisions of the specifications, and no award will be made either stated or implied at the bid opening. After the close of the bid opening meeting, the bids will be considered to be in the evaluation process and will not be available for review by bidders. Bid files may be examined during normal working hours only after an award has been made.

- 1.13 The total contract shall consist of this invitation for bid, to include all attachments, the standard State of Mississippi rental agreement attached at **Attachment – A**, and the proposed bid offer submitted by the successful vendor. No other documents shall be a part of the formal contractual agreement. In no event is a vendor to submit its own standard contract terms and conditions in response to this solicitation. This agreement shall take priority over any other agreements that may be signed separately in conjunction with this invitation for bid, to include third party agreements.
- 1.14 If an acceptable agreement cannot be negotiated within thirty (30) days of issuance of the intent to award notice, MSH may at its sole discretion at any time thereafter, terminate negotiations with that bidder and either negotiate an agreement with the next lowest and best bidder or choose to terminate the Invitation For Bid process and not enter into an agreement with any of the bidders.
- 1.15 Errors in bids submitted shall be determined and resolved as specified in paragraph 3.106.12 of the State of Mississippi Procurement manual.
- 1.16 Mississippi State Hospital shall own all documents, files, reports, work papers and working documentation, electronic or otherwise, created in connection with the products or services covered by the agreement resulting from this invitation for bid, except for the bidder's internal administrative and quality assurance files and internal project correspondence. The bidder shall deliver such documents and work papers to MSH upon termination or completion of agreement. The foregoing notwithstanding, the bidder shall be entitled to retain a set of such work papers for its files. Bidder shall be entitled to use such work papers only after receiving written permission from MSH and subject to any copyright protections.
- 1.17 Bidders must, upon request of the Mississippi State Hospital, furnish satisfactory evidence of their ability to furnish products or related services in accordance with the terms and conditions of these specifications. The Mississippi State Hospital reserves the right to make the final determination as to the bidder's ability.
- 1.18 Final inspection and acceptance or rejection may be made at delivery destination, but all materials and workmanship shall be subject to inspection and test at all times and places, and when practicable. Rejected material shall be removed by and at the expense of the contractor promptly after notification of rejection. Final inspection and acceptance or rejection of the supplies shall be made as promptly as practicable, not to exceed thirty (30) days after final acceptance by MSH, but failure to inspect and accept or reject supplies shall not impose liability on the Mississippi State Hospital for such supplies as are not in accordance with the specification. In the event necessity requires the use of supplies not conforming to specifications, payment therefore may be made at proper reduction in price. Upon proper notice from the contractor that installation or delivery has been completed to terms, the designated MSH Officer will schedule a time to make final inspections and provide written acceptance of items covered by this bid invitation, if applicable.
- 1.19 The Mississippi State Hospital is exempt from federal excise taxes and state and local sales or use taxes and bidders must quote prices which do not include such taxes. Evidence of exemption will be furnished upon request. Contractor shall also be liable for all personal property taxes that become due as a result of this agreement, if applicable.
- 1.20 The successful bidder shall ship (F.O.B. MSH – Freight Prepaid) and deliver/install all products/equipment, personnel, and materials necessary to successfully complete any awarded contract to the designated MSH receiving/installation site. All shipment costs, to include all fuel surcharges, will be paid by the successful vendor with no expense to MSH. No MSH agent will be

involved in or responsible for conveying any material, equipment or personnel to the designated receiving/installation site. Successful vendor shall schedule all shipments Monday through Friday, 7:30 A.M. to 3:30 P.M. unless otherwise approved by the designated MSH Officer. Deliveries will be made to the following location unless otherwise notified: **Mississippi State Hospital, 3550 Hwy 468 West, Whitfield MS 39193. Attn: Building 93 Receiving**

- 1.21 Successful vendor shall provide, within 5 working days after receiving notice of award, a toll free telephone number that can be used Monday through Friday, 8:00 A.M. to 5:00 P.M. CST to obtain product and related troubleshooting support. Successful vendor shall respond to all support calls within 24 hours of notification by the designated MSH Officer.
- 1.22 Successful vendor shall provide for initial, continuing and advanced in-service training, to include use and care demonstration, of all awarded products as/if requested by the designated MSH Officer. If required, training will be provided for all three (3) MSH shifts as requested by MSH. Successful vendor shall provide required in-service training within ten (10) working days after receiving a request from the designated MSH Officer.
- 1.23 Before submitting a bid, each bidder shall make all investigations and examination necessary to ascertain all site conditions and requirements affecting the full performance of the agreement and to verify any representations made by MSH upon which the bidder will rely. If the bidder receives an award as a result of their bid submission, failure to have made such investigations and examinations will in no way relieve the bidder from its obligation to comply in every detail with all provisions and requirements of the agreement documents, nor will a plea of ignorance of such conditions and requirements be accepted as a basis for any claim whatsoever by the contractor for additional compensation.
- 1.24 Mississippi State Hospital accepts no responsibility for any expenses incurred by the bidder in the preparation and presentation of a bid. Such expenses shall be borne exclusively by the bidder.
- 1.25 Contractor/seller represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008, and will register and participate in the status verification system for all newly hired employees, Miss. Code Ann. 71-11-1 et seq. (1972, as amended). The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "Status Verification System" means the illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor/Seller agrees to maintain records of such compliance. Upon request of the State and after approval of the Social Security Administration or Department of Homeland Security when required, Contractor/Seller agrees to provide a copy of such verification. Contractor/Seller further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. Contractor/Seller understands and agrees that any breach of these warranties may subject Contractor/Seller to the following: (a) termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public, or (b) the loss of any license, permit, certification or other document granted to Contractor/Seller by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. In the event of such termination/cancellation, Contractor/Seller would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit to do business in the State.

- 1.26 The agreement may be cancelled by MSH in whole or in part by written notice of default to the Contractor upon non-performance, violation of contract terms, delivery failure, bankruptcy or insolvency, or the making of an assignment for the benefit of creditors. An award may then be made to the next lowest and best bidder, or when time is of the essence, similar commodities and related services may be purchased on the open market. In either event, the defaulting Contractor (or his/her surety) shall be liable to MSH for cost to MSH in excess of the defaulted contract price. Lack of knowledge by the Contractor will in no way be a cause for relief from responsibility.
- 1.27 This invitation for bid and any eventual contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws, provisions, and any litigation with respect thereto shall be brought in the courts of the State. Contractor/Seller shall comply with applicable federal, state, and local laws and regulations.
- 1.28 This IFB and any eventual contract, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983, "and its exceptions. See Miss. Code Ann. 25-61-1 et. Seq. (1972, as amended) and Miss. Code Ann. 79-23-1 (1972, as amended). In addition, this IFB any eventual contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Miss. Code Ann. 27-104-151 et. Seq. (1972, as amended). Unless exempted from disclosure due to a court issued protective order, a copy of this executed contract is required to be posted to the Department of Finance and Administration's independent agency contract website for public access at <http://www.transparency.mississippi.gov>. Information, including confidential vendor information or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.

2. INSTRUCTIONS AND SPECIAL CONDITIONS

- 2.1 Bidders shall understand that this bid shall be **awarded on a line item basis to the lowest bidder for the items listed.** Bidders should refer to **ATTACHMENT – B** for detail product specifications.
- 2.2 The bid shall be awarded to the bidder submitting the lowest overall price for the line items listed.
- 2.3 Factors to be considered in determining the best bid include: (1) The total bid price of each line item (2) Conformity to specifications (3) Responsibility of bidder (4) Responsiveness of bidder and (5) Trial results as applicable for products where compliance with specifications is suspect or otherwise cannot be determined.
- 2.4 The terms Vendor, Contractor, and Bidder shall all have the same meaning in this IFB in that they all refer to the authorized party submitting a bid.
- 2.5 The following sections/pages, of the IFB, require the bidder to provide information and/or a signature: **Attachments – A, B, C, D, E, & G. Bidders using the on line method to submit a bid can attach the required documents on line or return any required bid documents by mail or hand delivery by the deadline date and time set to receive bids.**

3. SPECIFICATIONS

- 3.1 The term of the contract shall be for the one time purchase of the specified product. Either party shall have the right to cancel the contract, with cause, upon 60 days written notice to the other party.

- 3.2 It is our intent to rent an air mattress in the quantities listed on the bid form attached as part of this bid in **ATTACHMENT – B**. Quantities, however may be increased or decreased accordingly if the needs of MSH require such a change.
- 3.3 The minimum specifications, set forth in this invitation for bid, are used to set a standard and in no case are used with the intention to discriminate against any manufacturer. Brand names, if used in this invitation for bid, are for the purpose of describing the standard of quality, performance, and characteristics desired and are not intended to limit or restrict competition. Bidders should note the name of the manufacturer and reorder number of the product they propose to furnish and submit descriptive literature as applicable.
- 3.4 All no-substitution items, if included, have been determined by MSH Clinical staff to be part of an established standard of care and therefore no substitutions will be accepted for these items. They all however, are nationally sold products and generally available to most medical supply distributors.
- 3.5 Only one bid, per line item, per bidder. This means that only a single bid will be accepted from each bidder for each line item requested. Alternate bids, unless specifically requested, will not be considered.
- 3.6 Prices bid shall be fixed and firm for the term of the contract and for no less than the stated time of acceptance which is understood to be no less than sixty (60) days.
- 3.7 Invoices are to be billed to: Mississippi State Hospital, P.O. Box 1, Whitfield MS 39193, Attn: Accounts Payable.
- 3.8 The bidder agrees that submission of a signed bid form is certification the bidder will accept an award made to it as a result of the submission. Please see **ATTACHMENT – C Execution Form**.
- 3.9 Payments by state agencies using Mississippi's Accountability System for Government Information and Collaboration (Magic) shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of the Contractor's choice. The State may, at its sole discretion, require the Contractor to submit invoices and supporting documentation electronically at any time during the terms of this agreement. Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States Currency. Contractor/Seller agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. It is understood that MSH shall make all payments in accordance with Mississippi State Code Section 31-7-301, et. Seq. of the 1972 Mississippi Code annotated, as amended, which generally provides for payment by MSH within forty-five (45) days of the date the invoice is received and the services or goods are inspected and accepted as satisfactory. Please see **ATTACHMENT – D** for applicable rules and the signature page which must be signed and returned with your bid.
- 3.10 No bid shall be altered or amended after the specified time for opening bids. Bids and modifications or corrections thereof received after the closing time specified will not be considered.
- 3.11 Mississippi State Hospital reserves the right to reject any and all bids in whole or in part. MSH also reserves the right to cancel the solicitation in whole or in part when it is determined that such action is in the best interest of MSH. Also the right is reserved to waive minor informalities.
- 3.12 It is understood that MSH shall have sixty 60 days, from the bid opening date, to accept bid.

- 3.13 MSH intends to procure only the products and related services that meet the minimum standards stated herein. Alternates will be considered only if deviations to those standards are fully substantiated and submitted by potentially responsive sources denoting their equality to standards stated herein, along with adequate documentation: including specifications, and construction details along with bid for evaluation and approval.
- 3.14 All items must equal or exceed the specifications listed. The absence of detail specifications or the omission of detail description shall be recognized as meaning that only the best commercial practices are to prevail and that only first quality materials and workmanship are to be used.
- 3.15 Award will be based on acceptance of this invitation for bid in its entirety and vendor must respond using the attached bid form and other designated documents. Bidder understands that conditional or qualified bids shall be subject to rejection in whole or in part.
- 3.16 Tie low bids shall be awarded as specified in paragraph 3.106.14 of the Mississippi Office of Purchasing and Travel, and Fleet Management Procurement manual.
- 3.17 Bids may be modified or withdrawn by written notice received in the MSH Purchasing Office prior to the time and date set for bid opening.
- 3.18 Bidders shall provide a minimum of two (2) references as a part of their bid submittals. References shall be for the sale of products and related services that are the same or similar to those specified in this invitation for bid, completed within the most recent 48 months prior to the bid opening date. The references must include a contact name, organization name, telephone number, and date of last sale. Reference information should be provided on **ATTACHMENT – E**. MSH reserves the right to waive this requirement if it is in the best interest of Mississippi State Hospital.
- 3.19 All bidders must provide descriptive product literature, safety data sheets if applicable, and product samples for all bid items no later than the date and time of the bid opening. Samples, if not consumed or destroyed in testing, will be returned to the bidder at the bidder's expense. Bidders must label all samples with the bidder's company name, manufacturer name, product reorder number and bid file number. Request for the return of sample products must be made within ten (10) working days following the date of the bid opening. MSH reserves the right to waive this requirement in whole or in part.
- 3.20 It is the intent of these specifications to provide products which are acceptable and approved for use in a healthcare facility.
- 3.21 Successful bidder shall warrant directly or indirectly through product manufacturer all product material and craftsmanship to be free from defects for a period no less than the warranty period stated by the manufacturer to start from the date of acceptance, by MSH and as applicable.
- 3.22 All products shall be listed and approved to UL, CSA, CE or equal standards where applicable to its intended use at MSH as determined by the designated MSH Officer. Products shall comply with JC, FDA, EPA, OSHA, CAP, ACORN, NFPA, ASME, FMVSS, CDC, AHA, NSTM and GSA regulations and standards where applicable to the product's intended use at MSH as determined by the designated MSH Officer. MSH will be the final authority in determining if any applicable standard or regulation will be applied in whole or in part for the products specified in this bid invitation.
- 3.23 Bidders shall return the **entire bid package (all pages)** and the bid must be signed and sealed with the bidder's name and address on the outside of the envelope, and the time (3:00 P.M.), date of the bid opening (**August 10, 2016**), and MSH bid file number (**MSH 08.10.2016.438**) on the outside lower

left corner of the envelope. Bid prices shall be submitted on the bid form (ATTACHMENT –B). Bidders using the on line method to submit a bid may mail or hand deliver any of the documents required at paragraph 2.5 by the deadline date and time.

- 3.24 Bidders must register as a vendor with Mississippi's Accountability System for Government Information and Collaboration (MAGIC) prior to submission of a bid. Bidders are required to submit a bid, on line, through Magic and also submit a paper copy of their bid directly to MSH. Bidders may go to <http://mmrs.state.ms.us> website for assistance or call (601) 359-1343
- 3.25 Any bid received after the time and date set for receipt of bids is late. No late bid, late modification, or late withdrawal will be considered unless receipt would have been timely but for the action or inaction of state personnel directly serving MSH. Bidders submitting late bids will not be considered for award and shall be so notified as soon as practicable.
- 3.26 If the agency is closed for any reason, including but not limited to: acts of God , strikes, lockouts, riots, acts of war, epidemics, government regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters (the "Force Majeure Events"), which closure prevents the opening of bids at the advertised date and time, all bids received shall be publicly opened and read aloud on the next business day that the agency shall be open and at the previously advertised time. The new date and time of the bid opening, as determined in accordance with this paragraph, shall not be advertised, and all Vendors/Contractors, upon submission of a bid proposal, shall be deemed to have knowledge of and shall have agreed to the provisions of this paragraph. Bids shall be received by the agency until the new date and time of the bid opening as set forth herein. **The agency shall not be held responsible for the receipt of any bids for which the delivery was attempted and failed due to the closure of the agency as a result of a Force Majeure Event.** Each Vendor/Contractor shall be required to ensure the delivery and receipt of its bid by the agency prior to the new date and time of the bid opening.
- 3.27 Bidders should mark any and all pages of the bid considered proprietary information. Any pages not marked accordingly will be subject to review by the general public after award of the contract. Requests to review the proprietary information will be handled per applicable legal procedures.
- 3.28 It is understood that all bid products are subject to an evaluation trial to be conducted in an actual MSH area of use and may last up to 21 days as determined by MSH. If it is decided that a product trial will be conducted on a bid product, MSH will procure, at the bid price, the minimum amount necessary to complete the trial within the scope determined by MSH. Trial results, when conducted by MSH, will be a consideration in the bid award process.
- 3.29 It is understood that MSH has specified products to meet current stocking and usage needs and in doing so may specify acceptable specification ranges for some products. It is further understood and agreed that bid items are subject to price evaluation by the lowest unit of measure if required to equitably compare bid prices when bidders bid different packaging and size configurations within the specified range as applicable.
- 3.30 Bidders shall pay close attention to all product specifications, including size and packaging requirements where applicable, and will only submit bids which comply with all specifications.
- 3.31 Bidders shall submit pricing strictly as specified, whether that is by the each, pack, box or case unit.

- 3.32 Bidders shall understand that they are responsible for reading and understanding the entire IFB document to include the Additional Terms and Conditions listed in **ATTACHMENT – F**.
- 3.33 Bidders shall be careful to provide all information requested in the IFB to include **ATTACHMENT – G**, the Vendor Information Page and all other information pages.

H.L. Lockhart

H.L. Lockhart
Purchasing Chief

ATTACHMENT – A
SAMPLE RENTAL AGREEMENT
(FOR REFERENCE ONLY)

RENTAL AGREEMENT
FOR USE BY MISSISSIPPI AGENCIES & GOVERNING AUTHORITIES
AND VENDORS
(AIR MATTRESS RENTAL)

This Rental Agreement (hereinafter referred to as Agreement) is entered into by and between Mississippi State Hospital (hereinafter referred to as Customer), and Smith Medical Services, Inc. (hereinafter referred to as Vendor). This Agreement becomes effective upon signature by Customer and Vendor, and shall take precedence over all agreements and understandings between the parties. Vendor, by its acceptance hereof, agrees to rent to Customer, and Customer, by its acceptance hereof, agrees to rent from Vendor, the equipment, including applicable software and services to render it continually operational, listed in Exhibit A, which is attached hereto and incorporated herein.

1. CUSTOMER ACCOUNT ESTABLISHMENT:

- A. A separate Vendor Customer Number will be required for each specific customer/installation location.
- B. The Customer is identified as the entity on the first line of the "bill-to" address. All invoices and notices of changes will be sent to the "bill-to" address in accordance with Paragraph 8 herein.
- C. Ship-to and/or Installed-at address is the location to which the initial shipment of equipment/supplies will be made and the address to which service representatives will respond. Subsequent shipments of supplies for installed equipment will also be delivered to the "installed-at" address unless otherwise requested.
- D. Unless creditworthiness for this Customer Number has been previously established by Vendor, Vendor's Credit Department may conduct a credit investigation for this Agreement. Notwithstanding delivery of equipment, Vendor may revoke this Agreement by written notice to the Customer if credit approval is denied within thirty (30) days after the date this Agreement is accepted for Vendor by an authorized representative.

2. EQUIPMENT SELECTION, PRICES, AND AGREEMENT: The Customer has selected and Vendor agrees to provide the equipment, including applicable software and services to render it continually operational, identified on Exhibit A attached to this Agreement. The specific prices, inclusive of applicable transportation charges, are as set forth on the attached Exhibit A. The parties understand and agree that the Customer is exempt from the payment of taxes.

3. SHIPPING AND TRANSPORTATION: Vendor agrees to pay all non-priority, ground shipping, transportation, rigging and drayage charges for the equipment from the equipment's place of manufacture to the installation address of the equipment as specified under this Agreement. If any form of express shipping method is requested, it will be paid for by Customer.

4. RISK OF LOSS OR DAMAGE TO EQUIPMENT: While in transit, Vendor shall assume and bear the entire risk of loss and damage to the equipment from any cause whatsoever. If, during the period the equipment is in Customer's possession, due to gross negligence of the customer, the equipment is lost or damaged, then, the customer shall bear the cost of replacing or repairing said equipment.

5. DELIVERY, INSTALLATION, ACCEPTANCE, AND RELOCATION:

- A. DELIVERY: Vendor shall deliver the equipment to the location specified by Customer and pursuant to the delivery schedule agreed upon by the parties. If, through no fault of the Customer, Vendor is unable to deliver the equipment or software, the prices, terms and conditions will remain unchanged until delivery is made by Vendor. If, however, Vendor does not deliver the equipment or software within ten (10) working days of the delivery due date, Customer shall have the right to terminate the order without penalty, cost or expense to Customer of any kind whatsoever.

B. INSTALLATION SITE: At the time of delivery and during the period Vendor is responsible for maintenance of the equipment, the equipment installation site must conform to Vendor's published space, electrical and environmental requirements; and the Customer agrees to provide, at no charge, reasonable access to the equipment and to a telephone for local or toll free calls.

C. INSTALLATION DATE: The installation date of the equipment shall be that date as is agreed upon by the parties, if Vendor is responsible for installing the equipment.

D. ACCEPTANCE: Unless otherwise agreed to by the parties, Vendor agrees that Customer shall have ten (10) working days from date of delivery and installation, to inspect, evaluate and test the equipment to confirm that it is in good working order.

E. RELOCATION: Customer may transfer equipment to a new location by notifying Vendor in writing of the transfer at least thirty (30) calendar days before the move is made. If Vendor is responsible for maintenance of the equipment, this notice will enable Vendor to provide technical assistance in the relocation efforts, if needed, as well as to update Vendor's records as to machine location. There will be no cessation of rental charges during the period of any such transfer. The Vendor's cost of moving and reinstalling equipment from one location to another is not included in this Agreement, and Customer agrees to pay Vendor, after receipt of invoice of Vendor's charges with respect to such moving of equipment, which will be billed to Customer in accordance with Vendor's standard practice then in effect for commercial users of similar equipment or software and payment remitted in accordance with Paragraph 8 herein.

6. RENTAL TERM: The rental term for each item of equipment shall be that as stated in the attached Exhibit A. If the Customer desires to continue renting the equipment at the expiration of the original rental agreement, the Customer must enter into a new rental agreement which shall be separate from this Agreement. There will be no automatic renewals allowed. There shall be no option to purchase.

7. OWNERSHIP: Unless the Customer has obtained title to the equipment, title to the equipment shall be and remain vested at all times in Vendor or its assignee and nothing in this Agreement shall give or convey to Customer any right, title or interest therein, unless purchased by Customer. Nameplates, stencils or other indicia of Vendor's ownership affixed or to be affixed to the equipment shall not be removed or obliterated by Customer.

8. PAYMENTS:

A. INVOICING AND PAYMENTS: The charges for the equipment, software or services covered by this Agreement are specified in the attached Exhibit A. Charges for any partial month for any item of equipment shall be prorated based on a thirty (30) day month. Vendor shall submit an invoice with the appropriate documentation to Customer.

1. E-PAYMENT: The Vendor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The Customer agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies", Section 31-7-301, *et seq.* of the 1972 Mississippi Code Annotated, as amended, which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of the invoice.

2. PAYMODE: Payments by state agencies using Mississippi's Accountability System for Government Information and Collaboration (MAGIC) shall be made and remittance information provided electronically as directed by the State. The State, may at its sole discretion, require the Vendor to submit invoices and supporting documentation electronically at any time during the term of this Agreement. These payments shall be deposited into the bank account of the Vendor's choice. The Vendor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.

B. METER READINGS: If applicable, the Customer shall provide accurate and timely meter readings at the end

of each applicable billing period on the forms or other alternative means specified by Vendor. Vendor shall have the right, upon reasonable prior notice to Customer, and during Customer's regular business hours, to inspect the equipment and to monitor the meter readings. If Customer meter readings are not received in the time to be agreed upon by the parties, the meter readings may be obtained electronically or by other means or may be estimated by Vendor subject to reconciliation when the correct meter reading is received by Vendor.

C. COPY CREDITS: If applicable, if a copier is being rented, the Customer will receive one (1) copy credit for each copy presented to Vendor which, in the Customer's opinion, is unusable and also for each copy which was produced during servicing of the equipment. Copy credits will be issued only if Vendor is responsible for providing equipment services or maintenance services (except time and materials maintenance). Copy credits will be reflected on the invoice as a reduction in the total copy volume, except for run length plans which will be credited at a specific copy credit rate as shown on the applicable price list.

9. USE OF EQUIPMENT: Customer shall operate the equipment according to the manufacturer's specifications and documented instructions. Customer agrees not to employ or use additional attachments, features or devices on the equipment or make changes or alterations to the equipment covered hereby without the prior written consent of Vendor in each case, which consent shall not be unreasonably withheld.

10. MAINTENANCE SERVICES, EXCLUSIONS, AND REMEDIES:

A. SERVICES: If Vendor is responsible for providing equipment services, maintenance services (except for time and materials), or warranty services: (1) Vendor shall install and maintain the equipment and make all necessary adjustments and repairs to keep the equipment in good working order. (2) Parts required for repair may be used or reprocessed in accordance with Vendor's specifications and replaced parts are the property of Vendor, unless otherwise specifically provided on the price lists. (3) Services will be provided during Customer's usual business hours. (4) If applicable, Customer will permit Vendor to install, at no cost to Customer, all retrofits designated by Vendor as mandatory or which are designed to insure accuracy of meters.

B. EXCLUSIONS: The following is not within the scope of services: (1) Provision and installation of optional retrofits. (2) Services connected with equipment relocation. (3) Installation/removal of accessories, attachments or other devices. (4) Exterior painting or refinishing of equipment. (5) Maintenance, installation or removal of equipment or devices not provided by Vendor. (6) Performance of normal operator functions as described in applicable Vendor operator manuals. (7) Performance of services necessitated by accident; power failure; unauthorized alteration of equipment or software; tampering; service by someone other than Vendor; causes other than ordinary use; interconnection of equipment by electrical, or electronic or mechanical means with noncompatible equipment, or failure to use operating system software. If Vendor provides, at the request of the Customer, any of the services noted above, the Customer may be billed by Vendor at a rate not to exceed the Master State Prices Agreement between the Vendor and the State of Mississippi, or in the absence of such agreement at the then current time and materials rates.

C. REMEDIES: If during the period in which Vendor is providing maintenance services, Vendor is unable to maintain the equipment in good working order, Vendor will, at no additional charge, provide either an identical replacement or another product that provides equal or greater capabilities.

11. HOLD HARMLESS: To the fullest extent allowed by law, Vendor shall indemnify, defend, save and hold harmless, protect, and exonerate the Customer and the State of Mississippi, its Commissioners, Board Members, officers, employees, agents, and representatives from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever, including, without limitation, court costs, investigative fees and expenses, and attorneys' fees, arising out of or caused by Vendor and/or its partners, principals, agents, employees, and/or subcontractors in the performance of or failure to perform this Agreement. In the Customer's sole discretion, Vendor may be allowed to control the defense of any such claim, suit, etc. In the event Vendor defends said claim, suit, etc., Vendor shall use legal counsel acceptable to the Customer; Vendor shall be solely liable for all reasonable costs and/or expenses associated with such defense and the Customer shall be entitled to participate in said defense. Vendor shall not settle any claim, suit, etc., without the Customer's concurrence,

which the Customer shall not unreasonably withhold.

12. ALTERATIONS, ATTACHMENTS, AND SUPPLIES:

A. If Customer makes an alteration, attaches a device or utilizes a supply item that increases the cost of services, Vendor will either propose an additional service charge or request that the equipment be returned to its standard configuration or that use of the supply item be discontinued. If, within five (5) days of such proposal or request, Customer does not remedy the problem or agree in writing to do so within a reasonable amount of time, Vendor shall have the right to terminate this Agreement as provided herein. If Vendor believes that an alteration, attachment or supply item affects the safety of Vendor personnel or equipment users, Vendor shall notify Customer of the problem and may withhold maintenance until the problem is remedied.

B. Unless Customer has obtained title to the equipment free and clear of any Vendor security interest, Customer may not remove any ownership identification tags on the equipment or allow the equipment to become fixtures to real property.

13. ASSIGNMENT: The Vendor shall not assign, subcontract or otherwise transfer in whole or in part, its right or obligations under this Agreement without prior written consent of the Customer. Any attempted assignment or transfer without said consent shall be void and of no effect.

14. GOVERNING LAW: This Agreement shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws provisions, and any litigation with respect thereto shall be brought in the courts of said state. The Vendor shall comply with applicable federal, state, and local laws and regulations.

15. NOTICE: Any notice required or permitted to be given under this Agreement shall be in writing and personally delivered or sent by certified United States mail, postage prepaid, return receipt requested, to the party to whom the notice should be given at the address set forth below. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

For the Vendor:

Mr. Joe Jones
Owner,
101 Oliver St.
Brandon, MS 39999

For the Customer: Name

Mr. James Chastain
Director
3550 Hwy 468 West
Whitfield, MS 39193

16. WAIVER: Failure by the Customer at any time to enforce the provisions of this Agreement shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of this Agreement or any part thereof or the right of the Customer to enforce any provision at any time in accordance with its terms.

17. CAPTIONS: The captions or headings in this Agreement are for convenience only, and in no way define, limit or describe the scope or intent of any provision or section of this Agreement.

18. SEVERABILITY: If any term or provision of this Agreement is prohibited by the laws of the State of Mississippi or declared invalid or void by a court of competent jurisdiction, the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

19. THIRD PARTY ACTION NOTIFICATION: Vendor shall give Customer prompt notice in writing of any action or suit filed, and prompt notice of any claim made against Vendor by any entity that may result in litigation related in any way to this Agreement.

20. AUTHORITY TO CONTRACT: Vendor warrants that it is a validly organized business with valid authority to enter into this Agreement and that entry into and performance under this Agreement is not restricted or prohibited by any loan,

security, financing, contractual or other agreement of any kind, and notwithstanding any other provision of this Agreement to the contrary, that there are no existing legal proceedings, or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this Agreement.

21. RECORD RETENTION AND ACCESS TO RECORDS: The Vendor agrees that the Customer or any of its duly authorized representatives at any time during the term of this Agreement shall have unimpeded, prompt access to and the right to audit and examine any pertinent books, documents, papers, and records of the Vendor related to the Vendor's charges and performance under this Agreement. All records related to this Agreement shall be kept by the Vendor for a period of three (3) years after final payment under this Agreement and all pending matters are closed unless the Customer authorizes their earlier disposition. However, if any litigation, claim, negotiation, audit or other action arising out of or related in any way to this Agreement has been started before the expiration of the three (3) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved. The Vendor agrees to refund to the Customer any overpayment disclosed by any such audit arising out of or related in any way to this Agreement.

22. EXTRAORDINARY CIRCUMSTANCES: If either party is rendered unable, wholly or in part, by reason of strikes, accidents, acts of God, weather conditions or any other acts beyond its control and without its fault or negligence to comply with any obligations or performance required under this Agreement, then such party shall have the option to suspend its obligations or performance hereunder until the extraordinary performance circumstances are resolved. If the extraordinary performance circumstances are not resolved within a reasonable period of time, however, the non-defaulting party shall have the option, upon prior written notice, of terminating the Agreement.

23. TERMINATION: This Agreement may be terminated as follows: (a) Customer and Vendor mutually agree to the termination, or (b) If either party fails to comply with the terms and conditions of this Agreement and that breach continues for thirty (30) days after the defaulting party receives written notice from the other party, then the non-defaulting party has the right to terminate this Agreement. The non-defaulting party may also pursue any remedy available to it in law or in equity. Upon termination, all obligations of Customer to make payments required hereunder shall cease.

24. AVAILABILITY OF FUNDS: It is expressly understood and agreed that the obligation of the Customer to proceed under this Agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the continuing fulfillment of the agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to the Customer, the Customer shall have the right upon ten (10) working days written notice to the Vendor, to terminate this Agreement without damage, penalty, cost or expenses to the Customer of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

25. MODIFICATION OR RENEGOTIATION: This Agreement may be modified, altered or changed only by written agreement signed by the parties hereto. The parties agree to renegotiate the Agreement if federal, state and/or the Customer's revisions of any applicable laws or regulations make changes in this Agreement necessary.

26. WARRANTIES: Vendor warrants that the equipment, when operated according to the manufacturer's specifications and documented instructions, shall perform the functions indicated by the specifications and documented literature. Vendor may be held liable for any damages caused by failure of the equipment to function according to specifications and documented literature published by the manufacturer of the equipment.

27. E-VERIFY COMPLIANCE: If applicable, the Vendor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008, Section 71-11-1, *et seq.* of the Mississippi Code Annotated (Supp 2008), and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. The Vendor agrees to maintain records of such compliance and, upon request of the State and

approval of the Social Security Administration or Department of Homeland Security, where required, to provide a copy of each such verification to the Customer. The Vendor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws of these warranties, the breach of which may subject the Vendor to the following: (1) termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public, or (2) the loss of any license, permit, certification or other document granted to the Vendor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (3) both --in the event of such cancellation/termination, the Vendor would also be liable for any additional costs incurred by the Customer due to the contract cancellation or loss of license or permit.

28. HARD DRIVE SECURITY: Vendor must properly format the hard drive, deleting all information, or replace the hard drive with a new hard drive prior to storing or re-selling the equipment. The Customer may request to retain the hard drive for a nominal fee. Vendor will supply written notification to the Customer that all data has been made inaccessible. This notification must be provided with forty-five (45) days of the equipment being returned to the Vendor.

29. ENTIRE AGREEMENT: This Agreement constitutes the entire agreement of the parties with respect to the equipment, software or services described herein and supersedes and replaces any and all prior negotiations, understandings and agreements, written or oral, between the parties relating hereto. No terms, conditions, understandings, usages of the trade, course of dealings or agreements, not specifically set out in this Agreement or incorporated herein, shall be effective or relevant to modify, vary, explain or supplement this Agreement.

30. TRANSPARENCY: This Agreement, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983," codified as Section 25-61-1 et seq., Mississippi Code Annotated and exceptions found in Section 79-23-1 of the Mississippi Code Annotated (1972, as amended). In addition, this Agreement is subject to provisions of the Mississippi Accountability and Transparency Act of 2008 (MATA), codified as Section 27-104-151 of the Mississippi Code Annotated (1972, as amended). Unless exempted from disclosure due to a court-issued protective order, this Agreement is required to be posted to the Department of Finance and Administration's independent agency contract website for public access. Prior to posting the Agreement to the website, any information identified by the Vendor as trade secrets, or other proprietary information including confidential vendor information, or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes will be redacted. A fully executed copy of this Agreement shall be posted to the State of Mississippi's accountability website at: <http://www.transparency.mississippi.gov>.

31. COMPLIANCE WITH LAWS: The Vendor understands that the Customer is an equal opportunity employer and therefore maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful and the Vendor agrees during the term of the Agreement that the Vendor will strictly adhere to this policy in its employment practices and provision of services. The Vendor shall comply with, and all activities under this Agreement shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.

For the faithful performance of the terms of this Agreement, the parties have caused this Agreement to be executed by their undersigned representatives.

Witness my signature this the _____ day of _____, 20_____.

Vendor:

By: _____
Authorized Signature

Printed Name:

Title:

Witness my signature this the _____ day of _____, 20_____.

Customer:

By: _____
Authorized Signature

Printed Name: _____

Title: _____

EXHIBIT A
RENTAL AGREEMENT
FOR USE BY
MISSISSIPPI Agencies AND VENDORS
(AIR MATTRESS RENTAL)

The following, when signed by the Customer and the Vendor shall be considered to be a part of the Rental Agreement between the parties.

Vendor Company Name: Smith Medical Services, Inc.

Customer Agency Name: Mississippi State Hospital

Bill to Address: P.O. Box 1, Whitfield, MS 39193

Ship to Address: 3550 Hwy 468 West, Whitfield, MS 39193

<u>Description of Equipment, Software, or Services</u>	<u>Price</u>
Aqua Aire	\$7.00/Day
Ulcer Aire	\$5.00/Day

Delivery Schedule and Installation Date: 9/18/2016

Rental Term: (36 Months)

Start Date: 9/19/2016

End Date: 9/18/2019

Modifications: _____

Vendor Signature

Customer Signature

Procurement Schedule: MSH Bid File 08.10.2016.438 - Attachment B
MATTRESS RENTAL: AWARD BY LOWEST AND BEST LINE ITEM

SPECIFICATIONS

Low air loss/alternating pressure combination replacement air pressure relief mattress. Must be designed for use in providing therapy for stage III and stage IV decubitus ulcers. Mattress must be hospital grade. Must be designed to fit standard hospital beds. Mattress must provide no less than 24 hours of power outage protection. Must have an adjustable digitally controlled pump. Must have top cover which is low sheer, fluid resistant, and vapor permeable. Must have audible alarms which provide notice of service needs. Must be designed for rapid deflation to allow the administration of CPR. Drive Med-Aire Plus, EZM 23 ezair, or equal mattress.

Line Item #1: Low Air Loss/Alternating Pressure Mattress

Three Year Quantity : 43,800 Rental Days (Quantities are projections and are subject to change as the needs of MSH requires)

TASKS

1. Vendor shall make delivery the same day if MSH places an order by 12:00 Noon and by the next day for orders placed after 12:00 noon.
2. Vendor shall deliver, set up, and ensure the proper operation of mattress.
3. Vendor shall provide any needed training and care instructions at the time of delivery.
4. Vendor shall ensure that all mattresses delivered are clean/sanitary and operational.
5. Vendor shall be responsible for replacing any damaged or soiled top covers as required by MSH.
6. Vendor shall pick-up and decontaminate mattresses in a timely manner when use is terminated at MSH.
7. Vendor shall discontinue rental charges on the date MSH notifies the vendor to stop the rental and pick the mattress up.
8. Vendor shall be responsible for all maintenance and repairs of mattresses during the rental period.

Manufacturer: _____ Model: _____

Bid Price:\$ _____ Per Day Rental

Company Name: _____ Date: _____

Authorized Signature: _____ Title: _____

EXECUTION PAGE ATTACHMENT – C

BIDS WILL BE OPENED: **3:00 P.M. Wednesday, August 10, 2016, Building 93**, Mississippi State Hospital. I certify that I am authorized to enter into a binding contract, if this bid offer is accepted. By signing below, the undersigned agrees to all terms and conditions of the Invitation For Bid, including attachments, in whole and with exception of those amendments as acknowledged in writing to Bidder and signed by a duly authorized agent of MSH.

The prices listed are submitted on behalf of _____ and
(VENDOR'S NAME)
we agree to make shipments under this contract within _____ days from
receipt of your purchase order.

Unless notified to the contrary, this offer is good for sixty (60) days from the bid opening date. In submitting the above, it is expressly agreed that, upon proper acceptance of any or all items by Mississippi State Hospital, a contract shall hereby be created only after a written purchase order or contract award notice is mailed or otherwise furnished to the successful bidder(s) within the time of acceptance specified above without further action by either party. The contract shall not be assignable by the vendor in whole or in part without the written consent of Mississippi State Hospital.

ACKNOWLEDGEMENT OF AMENDMENTS

Bidders shall acknowledge the receipt of amendments by placing an "X" by each amendment received: Amendment No. 1() Amendment No. 2() Amendment No. 3() Amendment No. 4()

Vendor's Name: _____ Date: _____

Email Address: _____ Telephone: _____

Address: _____

City/State/Zip Code: _____

By: _____ Title: _____

(Vendor's Authorized Agent Signature)

ATTACHMENT - D

MISSISSIPPI DEPARTMENT OF FINANCE AND ADMINISTRATION ADMINISTRATIVE RULE FOR MANDATORY ELECTRONIC PAYMENT OF VENDORS AND ELECTRONIC INVOICING BY VENDORS

Vendor Name ("Vendor"): _____

Vendor has received a copy of the "Mississippi Department of Finance and Administration
Administrative Rule on Mandatory Electronic Payment of Vendors."

Vendor understands that MSH is an agency of the State of Mississippi, and as such, its payments are
processed by the Mississippi Department of Finance and Administration ("DFA").

Vendor agrees to one of the following:

- a) Within 60 days, enroll in the State of Mississippi E-Payment vehicle, currently
Paymode™, for the receipt of payment from the State of Mississippi.
- b) Obtain an exemption from DFA before providing any good or services which may be
billable to MSH.

Vendor understands that payment will not be received from the MSH until enrollment in
Paymode™ is complete, or an exemption is granted by DFA.

Signature

Printed Name

Title

Date

MISSISSIPPI DEPARTMENT OF FINANCE AND ADMINISTRATION
ADMINISTRATIVE RULE MANDATORY ELECTRONIC PAYMENT
OF VENDORS

I. General Purpose.

- A. The Mississippi Department of Finance and Administration (DFA) serves as the primary executive branch agency for fiscal management. Under §7-7-41, the State Fiscal Officer has the authority to prescribe rules and regulations concerning the issuance of warrants and other forms of payments for all departments, institutions and agencies of the state. This rule, unless otherwise noted, is to set as the standard that vendors of the State of Mississippi shall be paid electronically and shall be provided the supporting remittance detail by electronic means.
- B. This rule is a means for reducing the costs to produce paper warrants and remittance advices. The State has documented significant savings in the move to electronic payment and remittance. The State avoids the costs associated with printing, sorting, distributing, copying, and mailing warrants. Additionally, the State has determined that there are reduced opportunities for fraud and lost payments under this means of payment and remittance.
- C. Vendors benefit by receiving notification of pending deposits of funds and have options for interfacing the remittance data from the State into their accounts receivable systems.

II. Definitions.

- A. ACH: Automated Clearing House. Affiliated with the U. S. Treasury and the Federal Reserve System and used as the conduit for electronic payments and collections.
- B. EFT: Electronic Funds Transfer. Electronic Funds Transfer (EFT) provides for electronic payments and collections. EFT is safe, secure, efficient, and less expensive than paper check payments and collections. Issuance costs for EFT payments are approximately 80% less than the cost to issue the same payment on a paper warrant. EFT transactions use the ACH network associated with the Federal Reserve System.
 - 1. The State of Mississippi uses "standard EFT" for transferring funds to employee bank accounts for direct deposit of payroll payments and for some transfers to checking accounts of State agencies.
 - 2. The State uses expanded EFT in the transfer of funds and remittance information using PayMode™. The State has established PayMode™ as the default payment method for those payments and transfers requiring supporting remittance information.
- C. E-payment vehicle: Tool that captures the payment and remittance information and pushes it electronically to the designated vendor from the source system (MAGIC). The ACH is used to move the funds while a proprietary system is used to provide access to supporting remittance data and notification of the availability of funds to the State's vendors.
- D. Existing Agreements: Individual agreements in place for the acceptance of electronic

payments prior to the implementation of this policy.

- E. PayMode™: A Bank of America product, PayMode™ is the State's present e-payment vehicle.
- F. MAGIC: Mississippi Accountability System for Government Information and Collaboration, the successor system for SAAS and SPAHRS.
- G. Vendor payments: Payments initiated and approved by State Agencies for various goods and services or as used to transfer funds to other governing authorities such as school districts, cities, and counties.

III. Requirements for Transitioning to E-payment Vehicle

- A. All existing vendors presently set up for payment through standard EFT, unless otherwise approved as an exemption, must be enrolled in PayMode™.
- B. All vendors established as new vendors in the State Magic System must be established for e-payment and remittance via PayMode™.
- C. All remaining MAGIC vendors, unless specifically exempted, must convert to PayMode™ on the schedule determined by DFA.
- D. To register for PayMode™, vendors should go to the Bank of America's™ enrollment website at <http://www.bankofamerica.com/paymode/ms>.
 - 1. Vendor must have a valid email address in order to enroll with PayMode™.
This email address can be obtained through one of the free email services such as Yahoo or Hotmail.
 - 2. Vendor must have access to a computer. As computers are generally accessible in all businesses as well as in Public Libraries or other public forums, no exemption will be granted for having only limited or no access to a computer.
 - 3. Vendor may request assistance in enrolling with the State's e-payment service provider by contacting mash@dfa.state.ms.us or by calling MASH at (601)359-1343.

IV. Requirements for Transitioning to E-invoicing

- A. All vendors who contract with a state agency must agree to invoice the State electronically through PayMode.
- B. To register for PayMode E-invoicing, vendors must first register with PayMode for E-payment.
- C. Vendors must then complete additional information on the PayMode website to enroll in E-invoicing.
- D. Vendors may request assistance in enrolling in PayMode E-invoicing by contacting PayMode Customer Support at 1-866-252-7366.

V. Exemptions

- A. The following are exempt from this rule:
 - 1. State employees as defined in §25-9-107;
 - 2. Contract workers – note that Independent Contractors are **not** exempt from this rule;
 - 3. Vendors specifically approved for “one of” payments using the specific vendor number designated for that purpose by the Office of Fiscal

Management;

4. Right-of-Way acquisition payments made by the Mississippi Department of Transportation.
5. Debt service payments made by the Office of the State Treasurer;
6. Tax payments to the IRS (standard EFT);
7. Tax payments to the Mississippi State Tax Commission (standard EFT);
8. Transfers to the Public Employees Retirement System of Mississippi (standard EFT);
9. Transfers to the Mississippi Deferred Compensation and Trust/SBA (standard EFT);
10. Vendors who apply for exemption and are approved by DFA.

B. To apply for exemption, the vendor must submit a written application to:

Director, Office of Fiscal Management
Department of Finance and Administration
501 North West Street, Suite 1101B
Jackson, Mississippi 39201

C. Application must detail the following:

1. Reason(s) exemption requested. This must be a narrative explanation of the reason for the request;
2. Documentation of supporting cost and legal issues associated with the request for the exemption.

D. DFA will issue a written determination within 10 business days of the receipt of the exemption request. The written determination of DFA will be considered the final determination.

REFERENCE PAGE – EXHIBIT E

COMPANY NAME	CONTACT PERSON	TELEPHONE	DATE OF LAST SERVICE/SALE

YEARS IN BUSINESS

Indicate the length of time you have been in business providing the products/
services requested in this invitation for bid: _____ Years and
_____ Months

ADDITIONAL TERMS AND CONDITIONS

ATTACHMENT - F

Entire Agreement. This agreement, for all intents and purposes, is intended as the complete and exclusive statement of the agreement between Mississippi State Hospital (MSH) and vendor and supersede all prior or contemporaneous agreements, negotiations, course of prior dealings, or oral representations relating to the subject matter hereof. The terms and conditions of any purchase order, agreements, amendments, modifications, or other documents submitted by either party which conflict with, or in any way purport to amend or add to any of the terms and conditions of this agreement are specifically objected to by the other party and shall be of no force or effect, nor shall govern in any way the subject matter hereof, unless set forth in writing and signed by both parties.

Time of Performance. Time is of the essence in the rendering of services hereunder. Vendor agrees to perform all obligations and render product related support services set forth per this agreement in accordance with the schedules herein and as mutually agreed upon between Mississippi State Hospital and Vendor during the term of this agreement.

Default. In the event that the Vendor fails to carry out or comply with any of the terms and conditions of this agreement with MSH, MSH may notify the Vendor of such failure or default in writing and demand that the failure or default be remedied within ten (10) days; and in the event that the Vendor fails to remedy such failure or default within the ten (10) day period, MSH shall have the right to cancel this agreement upon thirty (30) days written notice.

Warranties. All goods and product related support services covered by this agreement shall conform to the specifications, set forth in this agreement or otherwise furnished or adopted by MSH, and shall be merchantable fit for the purpose intended, of best quality and workmanship, and free from all defects. MSH shall have the right of inspection and approval, and may at Vendor's expense, reject and return non-conforming goods or require re-performance of product related support services which are not in compliance with the requirements of this agreement. Defects shall not be deemed waived by MSH's failure to

notify Vendor upon receipt of goods or completion of product related support services, or by payment of invoice. All goods and/or product related support services provided under this agreement shall meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Administration (Public Law 91-596) and its regulations in effect or proposed as of the effective date of this agreement. All goods delivered pursuant to this agreement shall conform to standards established for such goods in accordance with any applicable federal, state or local laws and regulations, unless otherwise indicated in this agreement. The use or sale of any goods delivered under this agreement, or any part thereof, except goods produced to MSH's specifications, drawings, samples, or other description, shall not infringe any existing patent, trademark, copyright, or other intellectual property right of third parties.

Amendments. This agreement may be amended within the agreement period by mutual consent of both parties. No modification or amendment to this agreement shall become valid unless in writing and signed by both parties. All correspondence regarding modifications or amendments to this agreement must be forwarded to the MSH Purchasing Department for prior review and approval.

Independent Contractor Status. For all purposes of this agreement and notwithstanding any provision of this agreement to the contrary, Vendor is and independent contractor and is not a state employee, partner, joint venturer, or agent of MSH. Vendor will not bind nor attempt to bind MSH to any agreement or contract. As an independent contractor, Vendor is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including but not limited to workers' compensation insurance.

Right to Audit. At any time during the terms of this agreement and for a period of three (3) years thereafter, or until they are audited by MSH, whichever comes first, MSH or a duly authorized audit representative of MSH, The Mississippi Department of Mental Health, or the State Of Mississippi, at its expense and at reasonable times, reserves the right to audit Vendor's records and books relevant to all services provided under this agreement. In the event such and audit by MSH reveals any

errors/overpayments by MSH, Vendor shall refund MSH the full amount of such overpayments within thirty (30) days of such audit findings, or MSH, at its option, reserves the right to deduct such overpayments from any amounts MSH is required to pay Vendor under this agreement or any Purchase Order.

State Auditor's Office. Vendor understands that acceptance of funds under this agreement constitutes acceptance of the authority of the Mississippi State Auditor's Office, or any successor agency, to conduct and audit or investigation in connection with those funds pursuant to Mississippi State Code. Vendor agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. Vendor will include this provision in all contracts with permitted subcontractor.

Title and Risk of Loss. The title and risk of loss of goods shall not pass to MSH until MSH actually receives, takes possession and accepts the goods at the point or points of delivery.

Force Majeure. Neither party hereto will be liable or responsible to the other for loss or damage or for any delays or failure to perform due to causes beyond its reasonable control including acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character. Provided, however, in the event of force majeure occurrence, Vendor agrees to use its best efforts to mitigate the impact of the occurrence so that MSH may continue to provide healthcare services during the occurrence. In the event of such delay or failure to perform, the period specified for performance hereunder may be extended for a period equal to the time lost by reasons of the delay, or the total agreement may be reduced by the performance (or portions thereof) omitted during such delay. The provisions of this paragraph shall be effective notwithstanding that such circumstances shall have been operative at the date of this agreement.

Other Benefits. It is understood and agreed that no benefits, payments or considerations received by Vendor for the performance of product related support services associated with and pertinent to this agreement shall accrue, directly or indirectly, to any employees, elected

or appointed officers, representatives, or any other person identified as agents of, or who are by definition an employee of the State of Mississippi.

Non-Disclosure. Vendor and MSH acknowledge that they or their employees may, in the performance of this agreement, come in possession of proprietary or confidential information owned by or in the possession of the other. Neither part shall use any such information for its own benefit or make such information available to any person, firm, corporation, or other organization, whether or not directly or indirectly affiliated with Vendor or MSH, unless required by law. Each party shall also sign any non-disclosure agreements reasonably required by the other party and obtain such agreements from their representatives and/or employees as necessary.

Publicity. Vendor agrees that it shall not publicize this agreement or disclose, confirm or deny any details thereof to third parties or use any photographs or video recordings of MSH employees or patients or use MSH's name in connection with any sales promotion or publicity event without the prior express written approval of MSH.

Severability. If one or more provisions of this agreement, or the application of any provision to any party or circumstance, is held invalid, unenforceable, or illegal in any respect, the remainder of this agreement and the application of the provision to other parties or circumstances shall remain valid and in full force and effect.

Non-Waiver of Defaults. Any failure of MSH at any time, or from time to time, to enforce or require the strict keeping and performance of any of the terms and conditions of this agreement, or to exercise a right hereunder, shall not constitute a waiver of such terms, conditions, or rights, and shall not affect or impair same, or the right of MSH at any time to avail itself of same.

Assignment. Neither this agreement, nor any rights, obligations of moneys due hereunder are assignable or transferable (as security for advances or otherwise) unless agreed to in writing by MSH. Vendor shall not subcontract any portion of goods encompassed by this agreement without MSH's prior written approval. MSH shall not be required to recognize any assignment or subcontract made without its